

AMENDED IN ASSEMBLY JUNE 25, 2015

AMENDED IN ASSEMBLY JUNE 8, 2015

AMENDED IN SENATE APRIL 15, 2015

SENATE BILL

No. 197

Introduced by Senator Block

February 10, 2015

An act to add Sections 22602 and 22603 to the Financial Code, relating to finance lenders.

LEGISLATIVE COUNSEL'S DIGEST

SB 197, as amended, Block. Finance lenders: commercial loan: referral.

Existing law, the California Finance Lenders Law, provides for the licensure and regulation of finance lenders and makes a willful violation of the law a crime. Existing law defines a finance lender as any person who is engaged in the business of making consumer loans or commercial loans. Existing law defines a commercial loan as a loan of a principal amount of \$5,000 or more, or any loan under an open-end credit program, whether secured by either real or personal property, or both, or unsecured, the proceeds of which are intended by the borrower for use primarily for purposes other than personal, family, or household.

This bill would authorize a licensed finance lender to compensate an unlicensed person or company in connection with the referral of one or more prospective borrowers to the licensee for a commercial loan if certain requirements are met. These requirements would include that the referral leads to the consummation of a commercial loan, the loan contract provides for an annual percentage rate that does not exceed a certain percentage, the licensed finance lender obtains documentation

from the prospective borrower documenting the borrower's commercial status, as specified, and that the licensee maintains records of compensation paid to an unlicensed person or company, as specified. The bill would also require a licensed finance lender who receives an application for a commercial loan from a prospective borrower who has been referred by an unlicensed person or company to provide a specified statement to the borrower regarding the referral arrangement.

By creating new requirements, the willful violation of which would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 22602 is added to the Financial Code, to
2 read:
3 22602. A licensee that is a finance lender may pay
4 compensation to an unlicensed person or company in connection
5 with the referral of one or more prospective borrowers to the
6 licensee, when all of the following conditions are met:
7 (a) The referral by the unlicensed person or company leads to
8 the consummation of a commercial loan, as defined in Section
9 22502, between the licensee and the prospective borrower referred
10 by the unlicensed person or company.
11 (b) The loan contract provides for an annual percentage rate
12 that does not exceed 36 percent.
13 (c) Before approving the loan, the licensee does both of the
14 following:
15 (1) Obtains documentation from the prospective borrower
16 documenting the borrower's commercial status. Examples of
17 acceptable forms of documentation include, but are not limited to,
18 a seller's permit, business license, articles of incorporation, income
19 tax returns showing business income, or bank account statements
20 showing business income.

(2) Performs underwriting and obtains documentation to ensure that the prospective borrower will have sufficient monthly gross revenue with which to repay the loan pursuant to the loan terms, and does not make a loan if it determines through its underwriting that the prospective borrower's total monthly expenses, including debt service payments on the loan for which the prospective borrower is being considered, will exceed the prospective borrower's monthly gross revenue. Examples of acceptable forms of documentation for verifying current and projected gross monthly revenue and monthly expenses include, but are not limited to, tax returns, bank statements, merchant financial statements, business plan plans, business history, and industry-specific knowledge and experience. If the prospective borrower is a sole proprietor or a corporation and the loan will be secured by a personal guarantee provided by the owner of the corporation, a credit report from at least one consumer credit reporting agency that compiles and maintains files on consumers on a nationwide basis may also be considered.

(d) The licensee maintains records of all compensation paid to unlicensed persons and companies in connection with the referral of prospective commercial borrowers for a period of at least four years.

(e) The licensee annually submits information requested by the commissioner regarding the payment of compensation in the report required pursuant to Section 22159.

SEC. 2. Section 22603 is added to the Financial Code, to read:

22603. ~~At the time a licensee that is a finance lender receives an application for a commercial loan from a prospective borrower who has been referred by an unlicensed person or company, it shall provide the following written statement to the prospective borrower, in no smaller than 10-point type, and shall ask the applicant—~~*A licensee that is a finance lender shall provide a prospective borrower who has been referred by an unlicensed person or company the following written statement, in 10-point font or larger, at the time the licensee receives an application for a commercial loan, and shall request the prospective borrower to acknowledge receipt of the statement in writing:*

“You have been referred to us by [Name of Unlicensed Person or Company]. If you are approved for the loan, we may pay a fee

1 to [Name of Unlicensed Person or Company] for the successful
2 referral. If you wish to report a complaint about this loan
3 transaction, you may contact the Department of Business Oversight,
4 Division of Corporations at 1-866-ASK-CORP (1-866-275-2677),
5 or file your complaint online at www.dbo.ca.gov.”

6
7 SEC. 3. No reimbursement is required by this act pursuant to
8 Section 6 of Article XIII B of the California Constitution because
9 the only costs that may be incurred by a local agency or school
10 district will be incurred because this act creates a new crime or
11 infraction, eliminates a crime or infraction, or changes the penalty
12 for a crime or infraction, within the meaning of Section 17556 of
13 the Government Code, or changes the definition of a crime within
14 the meaning of Section 6 of Article XIII B of the California
15 Constitution.